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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 UNITED STATES OF AMERICA *ex* )  
9 *rel.* MASOUD SAMANDI, )

10 Plaintiffs, )

11 vs. )

12 MATERIALS AND )  
13 ELECTROCHEMICAL RESEARCH )  
14 CORPORATION, *et al.*, )

Defendants. )

No. CV-05-0124-TUC-DCB (BGM)

**REPORT & RECOMMENDATION**

15 Currently pending before the Court is the parties' settlement agreement. Relator  
16 Masoud Samandi and Defendants Materials and Electrochemical Research Corporation,  
17 James C. and Helga Withers, Raouf O. and Elia Loutfy, Roger Storm and Witold Kowbel  
18 seek dismissal of this cause of action with prejudice. Pursuant to the Rules of Practice in this  
19 Court, the matter was assigned to Magistrate Judge Macdonald for a report and  
20 recommendation. The Magistrate recommends the District Court, after its independent  
21 review of the record, accept the parties' settlement agreement and dismiss this cause of action  
22 with prejudice as to **all** parties.

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24 **I. BACKGROUND**

25 On February 22, 2005, Plaintiff-Relator Masoud Samandi filed this action in the  
26 United States District Court for the District of Arizona seeking damages based on violations  
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1 of the False Claims Act, 31 U.S.C. §§ 3729-33.<sup>1</sup> On March 31, 2008, the United States of  
2 America, on behalf of itself and its agencies and subunits (collectively “the Government”)  
3 filed its Notice of Election to Intervene in Part and Decline in Part (Doc. 32). On May 7,  
4 2008, the Government filed its corresponding Complaint in Intervention (Doc. 34) against  
5 certain Defendants, and through which it intervened with respect to certain of Samandi’s  
6 claims. The Government amended its Complaint. *See* Amended Compl. (Docs. 250 & 253).

7 On December 22, 2010, Plaintiff-Relator Samandi filed his Motion to Sever (Doc.  
8 270), which was subsequently granted by the Court on January 4, 2011. Order 1/4/2011  
9 (Doc. 279). On December 29, 2010, Plaintiff-Relator Samandi filed a Stipulation of  
10 Voluntary Dismissal (Doc. 271) which provided in part that “[a]fter the claims in the  
11 Government’s complaint in this matter have been finally resolved or adjudicated through a  
12 final and unappealable determination, the parties to the qui tam complaint will engage in  
13 good faith efforts to settle or mediate any unresolved claims in the qui tam complaint.” Stip.  
14 of Voluntary Dismissal (Doc. 271) at ¶ 2. On January 4, 2011, the Court granted Plaintiff-  
15 Relator’s motion for dismissal. Order 1/4/2011 (Doc. 280).

16 On February 2, 2011, a seven day jury trial commenced on the Government’s  
17 intervened claims against Defendants. *See* Minute Entry 2/2/11 (Doc. 299). The jury  
18 returned a verdict against the Government and in favor of the Defendants on all intervened  
19 claims. Minute Entry 2/16/2011 (Doc. 310).

20 On May 27, 2012, Plaintiff-Relator sought to reopen the litigation as to the remaining,  
21 unintervened, claims. Notice and Mem. in Support of Pl. Samandi’s Mot. to Reopen and  
22 Restore the Action (Doc. 347). Accordingly, the Court ordered the parties to attend  
23 mediation. Order 6/11/2012 (Doc. 351). On August 7, 2012, a settlement conference was  
24 held before Magistrate Judge Bruce G. Macdonald. Minute Entry 8/7/2012 (Doc. 363).

25 Pursuant to the parties’ stipulation, the Honorable David C. Bury has referred this  
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27 <sup>1</sup>Case Number CV-05-124-TUC-DCB, *United States ex rel. Masoud Samandi v.*  
28 *Materials and Electrochemical Research Corporation; James C. Withers; Raouf O. Loutfy;*  
*Witold Kowbel; Roger Storm; Helga Withers; and Elia Loutfy.*

1 matter to Magistrate Judge Macdonald for review of the final settlement agreement and  
 2 issuance of a report and recommendation regarding the same. Order 11/20/2012 (Doc. 371).

## 3 4 **II. DISCUSSION**

5 Plaintiff-relator Samandi and Defendants Materials and Electrochemical Research  
 6 Corporation, James C. and Helga Withers, Raouf O. and Elia Loutfy, Roger Storm and  
 7 Witold Kowbel have submitted their November 16, 2012 Confidential Settlement Agreement  
 8 to the Magistrate Judge for his review. The Government has not objected to the agreement.<sup>2</sup>

9 Having reviewed the settlement agreement, executed by the parties on November 16,  
 10 2012, and adopted herein by this reference,<sup>3</sup> the Magistrate Judge hereby recommends that  
 11 the District Court ACCEPT the settlement agreement and dismiss this matter WITH  
 12 PREJUDICE as to Plaintiff and all parties, all parties in interest and all persons that may be  
 13 claiming by or through Plaintiff, including without limitation the United States Government  
 14 and any agency or department thereof, including without limitation its Department of Justice.

15 Pursuant to the Court's November 20, 2012 Order (Doc. 371), 28 U.S.C. §636(b) and  
 16 Rule 72(b)(2) of the Federal Rules of Civil Procedure, any party may serve and file written  
 17 objections within fourteen (14) days after being served with a copy of this Report and  
 18 Recommendation. A party may respond to another party's objections within seven (7) days  
 19 after being served with a copy. Order 11/20/2012 (Doc. 371) at 2. The objecting party(ies)  
 20 may file a reply within three (3) days of the filing of any response to an objection. *Id.*  
 21 Failure to file timely objections to any factual or legal determination of the Magistrate Judge  
 22 may be deemed a waiver of the party's right to *de novo* review of the issues. *See United*  
 23 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir.) (*en banc*), *cert. denied*, 540 U.S. 900

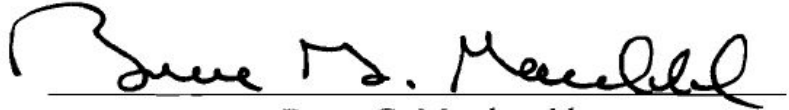
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 25 <sup>2</sup>Pursuant to the Court's November 20, 2012 Order (Doc. 371), the Government was directed  
 26 to "submit its objections, if any, on or before November 21, 2012 [to Magistrate Judge Macdonald]." Order 11/20/2012 (Doc. 371) at 2.

27 <sup>3</sup>The Confidential Settlement Agreement is attached hereto as "Exhibit A" and shall be filed  
 28 under seal.

1 (2003). If objections are filed, the parties should use the following case number: **CV-05-124-**  
2 **TUC-DCB.**

3 DATED this 5th day of December, 2012.

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6 Bruce G. Macdonald  
7 United States Magistrate Judge  
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